IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 624 OF 2005

Kamruddin Nasruddin Shaikh ..Appellant

vs.

M/s. Kalpavruksh Developers and ors. ..Respondents

Mr. A.A. Kumbhakoni with Ms. Meena Fulbandhe for appellant.

Mr. Raju Narula i/by M/s. Jhangiani Narula and Associates for Respondent No.1.

Mr. Jayesh Somaiya for Respondent Nos.3, 4 and 5.

CORAM: B.H. MARLAPALLE, J.

Date : July 05, 2005.

P.C.:

1. Head Mr. Kumbhakoni with Ms. Meena Fulbandhe the learned counsel for the appellant and Mr. Narula the learned counsel for respondent no.1 and Mr. Jayesh Somaiya the learned counsel for respondent nos.3,4 and 5.

2. This appeal impugns the ad-interim orders passed by the learned Judge of the City Civil Court at

Mumbai on 7/4/2005, 13/4/2005, 19/4/2005, 21/4/2005 and 27/4/2005 in Notice of Motion No.1398 of 2005 in S.C. Suit No.1699 of 2005. The first order passed on 7/4/2005 recorded that defendant no.1 was served the Notice of Motion but failed to appear. The notice purportedly issued by the learned Advocate for the plaintiff and dated 5/4/2005 addressed to the present appellant and the defendant Sruti Co-operative Housing Society Ltd. did not mention the date on which the Notice of Motion was likely to come up for hearing before the learned Judge of the City Civil Court at Mumbai and, therefore, the same could not be treated as a complete notice. The learned Judge passed ad-interim injunction in terms of prayer clause (a) of the draft Notice of Motion against the defendant no.1. On 13/4/2005 the defendant no.1-present appellant appeared and submitted that he was in possession of part of the suit property in terms of the documents with 12 out of 27 members of the defendant no.2 society. Defendant No.1 was directed to give inspection of all the original documents compiled and then produce them in the court and ad-interim order was confirmed until 19/4/2005 on which date it was

directed that the ad-interim order shall continue until further orders. On 21/4/2005 plaintiff was allowed to carry out amendments in the plaint as well as Notice of Motion and on 27/4/2005 the following order came to be passed:-

> " All the parties to this list claim to be in actual possession of the suit plot of land. The plaintiff and defendant nos.3,4 and 5 are negotiating. Defendant no.1 has already sued defendant nos.2,3,4 and 5 in his suit. He has not obtained any reliefs. He applies for status quo order. Ex-parte ad-interim injunction has been granted to the plaintiff. After hearing defendant no.1 that injunction has been confirmed and not vacated. Hence, now defendant no.1 cannot be granted any relief of status quo in the plaintiff's suit."

3. Mr. Kumbhakoni, the learned counsel for the appellant-defendant no.1 by reading the impugned ad-interim orders submitted that the defendant no.1 was not heard though he had filed a detailed reply and the injunction was only continued until the next date. The observations made by the learned Judge of the trial court that the injunction was confirmed after hearing the defendant no.1 and, therefore, it cannot be vacated or status quo could not be granted, have

been objected to.

4. It is also pointed out that the defendant no.1 has already filed an independent suit against the defendant nos.2 to 5 and that suit registered as Suit No.5166 of 2004 is pending before Court No.3 along with Notice of Motion No.4642 of 2004. When different parties who have initiated separate proceedings before the trial court and are claiming possession on the very same property, it is necessary that both these proceedings are clubbed together and heard by the same court including applications for injunction during the pendency of the suit. The impugned orders in the instant appeal have been passed by Court No.15 and it is now informed that S.C. Suit No.1699/2005 along with Notice of Motion No.1398 of 2005 has been assigned to Court No.1.

5. In the circumstances of this case, the appeal is hereby disposed off in terms of the following directions:-

(a) The learned Principal Judge of the City Civil Court at Mumbai to pass an order clubbing Suit No.5166 of 2004 and S.C. Suit No.1699 of 2005 and placing before either Court No.1 or Court No.3 as the case may be.

(b) Pending Notices of Motion in both the suits shall be heard and decided on their own merits as expeditiously as possible and in any case by 31/8/2005.

(c) The ad-interim order passed on 27/4/2005 in Notice of Motion No.1398 of 2005 shall stand stayed and it is further directed that status quo as at present in respect of the possession of the suit property shall be maintained till 31/8/2005, i.e. the party in possession of the suit property as on today shall remain in possession till 31/8/2005.

(B.H. Marlapalle,J.)